

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 3:99-CR-086
	:	3:10-CV-406
vs.	:	
	:	JUDGE WALTER H. RICE
JACK L. CLARK,	:	
	:	
Defendant	:	

DECISION AND ENTRY VACATING THE COURT'S JANUARY 29, 2013
DECISION AND ENTRY (DOC. #1267); ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #1263) IN ITS
ENTIRETY; OVERRULING DEFENDANT'S OBJECTIONS THERETO
(DOCS. #1268); OVERRULING WITH PREJUDICE DEFENDANT'S
MOTION TO ALTER/AMEND JUDGMENT UNDER FED. R. CIV. P. 59(e)
(DOCS. #1261, 1262); DENYING ANTICIPATED REQUEST FOR
CERTIFICATE OF APPEALABILITY AND MOTION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS*

Now before the Court are Defendant's Objections (Doc. #1268) to the Report and Recommendation dated December 6, 2012, recommending that Defendant's motions to alter or amend judgment under Fed. R. Civ. P. 59(e) be denied (Doc. #1263).

The procedural history of this matter bears repeating. Defendant was previously granted two extensions of time in which to file Objections --- extending the deadline from December 24, 2012 until January 21, 2013.¹ When no timely Objections were forthcoming, the Court waited an additional seven days and then adopted the Report and Recommendations as unopposed on

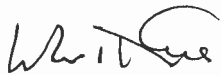
¹January 21, 2013 was Martin Luther King, Jr. Day. Therefore, Defendant's Objections were due on January 22, 2013.

January 29, 2013. That same day, the Clerk received and filed the instant Objections. Because the Certificate of Service is dated January 7, 2013 --- thereby in compliance with the extended deadline --- and in the interest of justice, the Court accepts Defendant's Objections as timely under the prison mailbox rule. *See Thompson v. Chandler*, 36 F. App'x 783, 784-85 (6th Cir. 2002). To that end, the Court vacates the January 29, 2013, Decision and Entry (Doc. #1267) Adopting Magistrate Judge Michael J. Newman's Report and Recommendation on the basis that Defendant had failed to timely object thereto.

Having fully considered Defendant's Objections, however, the Court's decision remains the same. Based on the reasoning and citations of authority set forth in the December 6, 2012, Report and Recommendation, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court overrules Defendant's Objections thereto (Doc. #1268). Thus, the Court overrules with prejudice Defendant's Motions to Alter/Amend Judgment under Fed. R. Civ. P. 59(e) (Docs. #1261, #1262).

Given that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Defendant is denied a certificate of appealability and denied leave to appeal *in forma pauperis*.

Date: February 25, 2013



WALTER H. RICE
UNITED STATES DISTRICT JUDGE